

Introduced by Senator Figueroa

February 18, 2005

An act to amend Sections 1812.85 and 1812.86 of, and to add Section 1812.96 to, the Civil Code, relating to health studios.

LEGISLATIVE COUNSEL'S DIGEST

SB 581, as introduced, Figueroa. Health studio contracts: maximum fees : cancellation rights.

(1) Existing law provides that a consumer may cancel a contract for health studio services within 3 business days after the contract is executed or if the agreed upon services are not provided within 6 months after the date of the contract.

This bill would authorize a consumer to cancel a contract for health studio services (a) within 5 business days after the contract is executed, or within 30 or 60 days thereafter if the amount of the contract exceeds certain dollar amounts; (b) if the health studio fails to provide the specific facilities advertised or offered within the earlier of 6 months or as provided in the contract; or (c) if the health studio eliminates or reduces the scope of the facilities, as specified. The bill would prescribe the method for calculating the consumer's refund following cancellation of the contract.

The bill would also require a seller of health studio services to hold in trust all money received from a consumer if the health studio facility has not yet opened for business, except in certain circumstances, and would prohibit the seller from drawing on, transferring or encumbering those funds, except as specified.

(2) Existing law prohibits any contract for health studio services from requiring a payment from the client in excess of \$1,000, exclusive of interest or finance charges.

This bill would increase that limit to \$3,000, including initiation or membership fees, until January 1, 2010, at which time that limit would be further increased to \$4,400, including those fees.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1812.85 of the Civil Code is amended to
2 read:

3 1812.85. (a) Every contract for health studio services shall
4 provide that performance of the agreed upon services will begin
5 within six months ~~from~~ after the date the contract is entered into.
6 *The consumer may cancel the contract and receive a pro rata*
7 *refund if the health studio fails to provide the specific facilities*
8 *advertised or offered in writing by the time indicated, which may*
9 *not be later than six months after the execution of the contract or,*
10 *if no time is indicated, within six months after the execution of*
11 *the contract.*

12 (b) (1) Every contract for health studio services shall, in
13 addition, contain on its face, and in close proximity to the space
14 reserved for the signature of the buyer, a conspicuous statement
15 in a size equal to at least 10-point boldface type, as follows:

16
17 “You, the buyer, may cancel this agreement at any time prior to
18 midnight of the ~~third~~ fifth business day of the health studio after
19 the date of this agreement, excluding Sundays and holidays. To
20 cancel this agreement, mail or deliver a signed and dated notice,
21 or send a telegram which states that you, the buyer, are canceling
22 this agreement, or words of similar effect. ~~Such~~ The notice shall
23 be sent to,

24
25 _____
26 (Name of health studio operator)

27
28 at _____
29 (Address of health studio ~~operator~~ operator).”

30
31 (2) The contract for health studio services shall contain on the
32 first page, in a type size no smaller than that generally used in the

body of the document, the following: (A) the name and address of the health studio operator to which the notice of cancellation is to be mailed, and (B) the date the buyer signed the contract.

(3) *The contract shall provide a description of the services, facilities, and hours of access to which the consumer is entitled. Any services, facilities, and hours of access that are not described in the contract shall be considered optional services.*

(4) Until the health studio operator has complied with this section, the buyer may cancel the contract for health studio services.

~~(4)–~~

(5) All moneys paid pursuant to ~~such~~ a contract for health studio services shall be refunded within 10 days ~~of~~ after receipt of the notice of cancellation, except that payment shall be made for any health studio services received prior to ~~such~~ cancellation.

(c) *If at any time during the term of the contract, the health studio eliminates or substantially reduces the scope of the facilities, such as swimming pools or tennis courts, that were described in the contract, in an advertisement relating to the specific location, or in a written offer, and available to the consumer upon execution of the contract, the consumer may cancel the contract and receive a pro rata refund. The consumer may not cancel the contract pursuant to this subdivision if the health studio, after giving reasonable notice to its members, temporarily takes facilities out of operation for reasonable repairs, modifications, substitutions, or improvements.*

(d) (1) *If a contract for health studio services requires payment of one thousand five hundred dollars (\$1,500) to two thousand dollars (\$2,000), inclusive, for the use of the facility by a person, including initiation fees or membership fees, the consumer shall have the right to cancel the contract within 30 days after the contract is executed.*

(2) *If a contract for health studio services requires payment of two thousand one dollars (\$2,001) or more for the use of the facility by a person, including initiation fees or membership fees, the consumer shall have the right to cancel the contract within 60 days after the contract is executed.*

(3) *The right of cancellation provided in this subdivision shall be set out in the membership contract.*

1 (4) *The rights and remedies under this paragraph are*
2 *cumulative to any rights and remedies under other law.*

3 (e) *Upon cancellation, the consumer shall be liable only for*
4 *that portion of the total contract payment, including initiation*
5 *and membership fees and all other charges however*
6 *denominated, that has been available for use by the consumer,*
7 *based upon a pro rata calculation over the term of the contract.*
8 *The remaining portion of the contract payment shall be returned*
9 *to the consumer by the health studio.*

10 SEC. 2. Section 1812.86 of the Civil Code is amended to
11 read:

12 1812.86. (a) No contract for health studio services shall
13 require payment by the person receiving the services or the use of
14 the facilities of a total amount in excess of the amount specified
15 in subdivision (b) or (c).

16 (b) The limit specified in subdivision (a) shall, on ~~January 1,~~
17 ~~1981 and after January 1, 2006, be one thousand dollars~~
18 ~~(\$1,000),~~ *three thousand dollars (\$3,000), inclusive of inflation*
19 *or membership fees and exclusive of interest or finance charges.*

20 (c) *The limit in subdivision (a) shall, on and after January 1,*
21 *2010, be four thousand four hundred dollars (\$4,400), inclusive*
22 *of initiation or membership fees and exclusive of interest or*
23 *finance charges.*

24 SEC. 3. Section 1812.96 is added to the Civil Code, to read:

25 1812.96. (a) Except as provided in subdivision (c) or (d), all
26 money received by the seller of health studio services from a
27 consumer for a health studio facility that has not yet opened for
28 business shall be held in trust and shall be deposited in a trust
29 account established in a state or federally chartered bank or
30 savings association. The seller shall not draw, transfer, or
31 encumber any of the money held in trust until five business days
32 after the health studio facility has opened and the seller has fully
33 paid refunds to consumers who canceled their contracts as
34 provided in subdivision (b) or in Section 1812.85.

35 (b) In addition to any other cancellation rights, a consumer
36 who pays any money under a contract for health studio services
37 for a health studio facility that has not yet opened for business
38 has the right to cancel the contract and receive a full refund at
39 any time prior to midnight of the fifth business day after the date
40 the health studio opens for business. The cancellation right shall

1 be set forth in the contract. The refund shall be paid within 10
2 days of receipt of notice of cancellation.

3 (c) Notwithstanding subdivision (a), a seller of health studio
4 services may draw on money held in trust to pay refunds or may
5 draw, transfer, or encumber funds to the extent that the amount is
6 offset by a bond of equal or greater amount that satisfies this
7 subdivision. The bond shall be issued by a surety insurer
8 admitted to do business in this state and shall be filed with the
9 Secretary of State. The bond shall be in favor of the State of
10 California for the benefit of consumers harmed by a violation of
11 this title.

12 (d) Subdivision (a) does not apply to a seller of health studio
13 services that is, at the time money is received from the consumer,
14 operating at least five health studio facilities in this state that
15 have been in operation for a period of at least five years, and that
16 has current tangible assets, based on book value, that exceed
17 current liabilities by at least one million dollars (\$1,000,000).